

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

DICKEY'S BARBECUE RESTAURANTS, INC. §

Plaintiff, §

§ CIVIL ACTION NO. 3:10-CV-0300-P

vs. §

LIRA, LLC and LUIGI MANGIONE §

Defendants.

**PLAINTIFF'S REQUEST FOR CLERK TO ENTER  
DEFAULT PURSUANT TO F.R.C.P. 55(a)**

COMES NOW the Plaintiff Dickey's Barbecue Restaurants, Inc. ("Plaintiff") and files this its Plaintiff's Request for Clerk to Enter Default Pursuant to Fed. R. Civ. Pro. 55(a) in the above referenced and numbered cause against Defendants Lira, LLC and Luigi Mangione and in support thereof would respectfully show the following:

I.

**FACTS ESTABLISHING DEFAULT**

1. On or about February 16, 2010, Plaintiff filed Plaintiff's Original Complaint and Application for Temporary Restraining Order, Preliminary and Permanent Injunction and Recovery of Damages (the "Complaint") in the above styled and numbered cause asserting certain claims and causes of action against the Defendants Lira, LLC and Luigi Mangione ("Defendants"). An original copy of Plaintiff's Compliant is filed with the Court and can be found in the Court's case file jacket

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maintained in this case. Plaintiff requests that the Court take judicial notice of the facts set forth therein for all purposes.

Service Upon Defendant Lira, LLC

2. As more fully set forth in the Officer's Return filed in this cause on March 3, 2010, Defendant Lira, LLC was served with Summons by and through the Secretary of State of Texas as agent for service of process for such Defendant by Deputy Lydia M. Barron of the office of Constable Bruce Elfant of Precinct 5, Travis County, Texas on February 23, 2010. The Secretary of the State of Texas issued its Gold Sealed Certificate of the Secretary of State of Texas on March 9, 2010 which was filed in this cause on March 15, 2010. The Gold Sealed Certificate of Secretary of State of Texas establishes that the Summons with Plaintiff's Complaint and other papers attached was received by the Secretary of State on February 23, 2010 and that a copy of the Summons with Plaintiff's Complaint and other papers attached was forwarded by certified mail, return receipt requested on March 3, 2010 to Defendant Lira, LLC to its registered agent, Luigi Mangione at its registered office and home office and that said process was returned to the Secretary of State of Texas on March 5, 2010 "bearing the Signature of Addressee's Agent". Original copies of the Officer's Return and the Gold Sealed Certificate of the Secretary of State of Texas are filed in Court's case file jacket maintained in this case and Plaintiff requests that the Court take judicial notice of the facts set forth therein for all purposes.

Service Upon Defendant Luigi Managione

3. As more fully set forth in the Officer's Return filed in this cause on March 3, 2010, Defendant Luigi Mangione was served with Summons by and through the Secretary of State of Texas as agent for service of process for such Defendant by Deputy Lydia M. Barron of the office

of Constable Bruce Elfant of Precinct 5, Travis County, Texas on February 23, 2010. The Secretary of the State of Texas issued its Gold Sealed Certificate of the Secretary of State of Texas on March 9, 2010 which was filed in this cause on March 15, 2010. The Gold Sealed Certificate of Secretary of State of Texas establishes that the Summons with Plaintiff's Complaint and other papers attached was received by the Secretary of State on February 23, 2010 and that a copy of the Summons with Plaintiff's Complaint and other papers attached was forwarded by certified mail, return receipt requested on March 3, 2010 to Defendant Luigi Mangione at his principal place of business and home office and that said process was returned to the Secretary of State of Texas on March 5, 2010 "bearing the Signature of Addressee". Original copies of the Officer's Return and the Gold Sealed Certificate of the Secretary of State of Texas are filed in Court's case file jacket maintained in this case and Plaintiff requests that the Court take judicial notice of the facts set forth therein for all purposes.

4. The deadline for the Defendants to answer or otherwise respond to Plaintiff's Complaint has expired and Defendants have not filed and/or served an answer to Plaintiff's Complaint, or otherwise responded or appeared in this cause. Defendants have not sought an extension to answer or otherwise respond or appear herein..

5. Plaintiff requests that the Clerk enter, pursuant to F.R.C.P. 55(a), a default against both Defendants Lira, LLC and Luigi Mangione on the grounds that Defendants have failed to file an answer or otherwise respond or appear herein.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Dickey's Barbecue Restaurants, Inc. requests that the Clerk grant this Plaintiff's Request for Clerk to Enter Default Pursuant to Fed. R. Civ. Pro. 55(a) and enter a default in favor of Plaintiff Dickey's Barbecue Restaurants, Inc. against

PLAINTIFF'S REQUEST FOR CLERK TO ENTER DEFAULT PURSUANT TO FRCP 55(a)

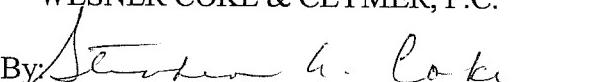
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both Defendants Lira, LLC and Luigi Mangione and that Plaintiff Dickey's Barbecue Restaurants, Inc. have such other and further relief to which Plaintiff Dickey's Barbecue Restaurants, Inc. may show itself justly entitled.

Respectfully submitted,

WESNER COKE & CLYMER, P.C.

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ATTORNEYS FOR PLAINTIFF

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